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A.C., Appellant)	
)	
and)	Docket No. 20-1510
)	Issued: April 23, 2021
U.S. POSTAL SERVICE, CURSEEN-MORRIS)	
MAIL PROCESSING & DISTRIBUTION)	
CENTER, Washington, DC, Employer)	
)	

Case Submitted on the Record

Before:
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's February 11, 2020 decision was Sunday, August 9, 2020. Because the last day of the 180-day filing period fell on a Sunday, the filing period is extended until the close of the next business day, which was Monday, August 10, 2020. Accordingly, the appeal is timely filed pursuant to 20 C.F.R. § 501.3(f)(2).

(OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 24, 2019 employment incident; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

On December 27, 2019 appellant, then a 54-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2019 she injured her right hip when she pulled and pushed over-the-road (OTR) containers while performing mail distribution in the performance of duty. She did not stop work.

In a December 26, 2019 medical report, Dr. Mubarik Shah, a Board-certified general surgeon, noted that appellant injured her right hip on December 24, 2019 while lifting and moving heavy equipment at work. He indicated that appellant had a history of right hip arthritic work-related changes since 2016. Dr. Shah conducted a physical examination and assessed a right hip injury.

In a December 31, 2019 medical report, Dr. Eileen Greenwald, an occupational medicine specialist, noted that appellant's right hip pain was worsened with prolonged standing or walking. She conducted a physical examination and assessed a right hip injury. Appellant also submitted physical therapy reports of even date.

In an undated attending physician's report (Form CA-20), Dr. Shah diagnosed right hip injury due to appellant lifting heavy equipment at work. He checked a box marked "Yes," indicating that appellant's right hip condition was caused or aggravated by an employment activity.

In a January 10, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

Tara Jernejcic, a physician assistant, diagnosed right hip pain in a January 7, 2020 medical report.

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because OWCP never contacted her on the date and at the time scheduled for the oral hearing. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

³ 5 U.S.C. § 8101 *et seq.*

In a January 23, 2020 medical report, Dr. Shah diagnosed right hip pain.

Appellant, in a January 30, 2020 response to OWCP's development questionnaire, indicated that she sustained her injury while moving heavy equipment across the workroom floor, when one of the OTR containers got caught underneath a metal bumper of the double doors. She alleged that on December 25, 2019 she struggled to support her full weight onto her right hip and leg after getting out of bed and could not walk without using a cane. Appellant asserted that she sustained no other injury outside of work.

In a February 3, 2020 work status report, Hope A. Pennestri, a certified registered nurse practitioner, diagnosed right hip pain and provided work restrictions.

By decision dated February 11, 2020, OWCP accepted that the December 24, 2019 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

On March 9, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 14, 2020 letter, OWCP informed appellant that an oral hearing would take place on July 17, 2020 at 10:30 a.m., Eastern Standard Time (EST). It provided a toll-free number and a passcode to access the hearing by telephone. OWCP requested that appellant dial the toll-free number "a few minutes" before the commencement of the scheduled hearing. It mailed the letter to appellant's last known address of record.

By decision dated July 29, 2020, OWCP determined that appellant had abandoned her request for an oral hearing as she failed to make an appearance. It further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either before or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

⁴ *Supra* note 2.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 24, 2019 employment incident.

In a December 26, 2019 medical report and an undated Form CA-20, Dr. Shah noted that appellant injured her right hip at work on December 24, 2019 and assessed a right hip injury. Dr. Greenwald, in her December 31, 2019 medical report, also noted a right hip injury. Drs. Shah and Greenwald, however, did not provide a specific diagnosis. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹¹ Thus, their reports are insufficient to establish appellant's claim.

In a January 23, 2020 medical report, Dr. Shah diagnosed right hip pain. The Board has consistently held, however, that pain is a description of a symptom and not, in itself, considered a

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

firm medical diagnosis.¹² Thus, his January 23, 2020 report is also insufficient to establish appellant's claim.

Appellant also submitted reports dated from December 31, 2019 to February 3, 2020 from a physician assistant, a nurse practitioner, and a physical therapist. The Board has held, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴

As there is no evidence of record that establishes a medical diagnosis in connection with the accepted December 24, 2019 employment incident, the Board finds that appellant has not met her burden of proof.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁶ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁷ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁸

¹² See *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹³ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (physician assistants are not considered physicians as defined under FECA); *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

¹⁴ See *O.R.*, Docket No. 20-0743 (issued January 28, 2021).

¹⁵ *J.L.*, Docket No. 18-1804 (issued April 12, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁶ 20 C.F.R. § 10.616(a).

¹⁷ *Id.* at § 10.617(b).

¹⁸ *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.¹⁹ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

Following OWCP's February 11, 2020 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 14, 2020 letter, OWCP's hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for July 17, 2020 at 10:30 a.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record²¹ and provided instructions on how to participate, including that she was to call-in "a few minutes" before the hearing was scheduled to begin. Appellant failed to call-in for the scheduled hearing using the provided telephone number and passcode. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing.²² The Board, thus, finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.²³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 24, 2019 employment incident. The Board further finds that OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

¹⁹ *Supra* note 16 at § 10.622(f).

²⁰ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also E.M.*, Docket No. 20-0837 (issued January 27, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

²¹ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's May 14, 2020 hearing notice such that the presumption of receipt would be rebutted.

²² *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

²³ *A.J.*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the July 29 and February 11, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board